

**DETERMINATIONS OF NO JURISDICTION FOR ISOLATED, NON-NAVIGABLE, INTRA-STATE WATERS
RESULTING FROM U.S. SUPREME COURT DECISION IN SOLID WASTE AGENCY OF NORTHERN COOK
COUNTY V. U.S. ARMY CORPS OF ENGINEERS**

DISTRICT OFFICE: CESPL

FILE NUMBER: 994013100-DE

REGULATORY PROJECT MANAGER: Daisy Eldridge **Date:** November 10, 2004

PROJECT REVIEW/DETERMINATION COMPLETED: **In the office (Y/N)** Y **Date:** November 9, 2004
At the project site (Y/N) Y **Date:** May 13, 2004

PROJECT LOCATION INFORMATION:

State: Arizona

County: Yavapai

Center coordinates of site by latitude & longitudinal coordinates: 34-45-59 / 112-6-31

Approximate size of site/property (including uplands & in acres): 214 acres

Name of waterway or watershed: Upper Verde – 15060202 (HUC)

SITE CONDITIONS:

Type of aquatic resource ¹	0-1 ac	1-3 ac	3-5 ac	5-10 ac	10-25 ac	25-50 ac	> 50 ac	Linear feet	Unknown
Lake									
River									
Stream									
Dry Wash									
Mudflat									
Sandflat									
Wetlands	X								
Slough									
Prairie pothole									
Wet meadow									
Playa lake									
Vernal pool									
Natural pond									
Other water (identify type)									

¹Check appropriate boxes that best describe type of isolated, non-navigable, intra-state water present and best estimate for size of non-jurisdictional aquatic resource area.

Migratory Bird Rule Factors ¹ :	If Known		If Unknown Use Best Professional Judgment		
	Yes	No	Predicted to Occur	Not Expected to Occur	Not Able To Make Determination
Is or would be used as habitat for birds protected by Migratory Bird Treaties?			X		
Is or would be used as habitat by other migratory birds that cross state lines?			X		
Is or would be used as habitat for endangered species?			X		
Is used to irrigate crops sold in interstate commerce?				X	

¹Check appropriate boxes that best describe potential for applicability of the Migratory Bird Rule to apply to onsite, non-jurisdictional, isolated, non-navigable, intra-state aquatic resource area.

TYPE OF DETERMINATION: Preliminary _____ Or Approved X

OPTIONAL ADDITIONAL INFORMATION SUPPORTING NJD (e.g., paragraph 1 – site conditions; paragraphs 2-3 – rationale used to determine NJD, including information reviewed to assess potential navigation or interstate commerce connections; and paragraph 4 – site information on waters of the U.S. occurring onsite):

The applicant has been ordered via a Consent Decree to conduct various environmental remediation activities within the 214-acre United Verde Mine property. Namely, these activities include the capping (covering and revegetation) of mine tailing stockpiles; replacement of storm water inlet boxes and piping; upgrading of existing storm water culverts and seepage control facilities; removal of seepage impoundments, combining of others, and upgrading of remaining seepage ponds; and construction of storm water diversion channels around remaining seepage ponds. The wetland identified within the project area as Hull Springs is located immediately adjacent to a tailings stockpile, situated above the stockpile, on the east side of Woodchute Mountain in the Black Hills. The natural spring has developed riparian and wetland vegetation, and the water coming from the spring seeps down and into the tailings pile. The area between the spring and washes downstream of the mine was examined for any evidence of a

hydrologic connection during the May 13, 2004 site visit, and no evidence was discovered. Due to the extensive manipulation of the terrain immediately below the spring (e.g., the tailings pile and years of grading associated with the pile), it was not possible to trace where the water from the spring was discharging downstream of the spring, or to locate a distinct discharge point. Due to the lack of any physical evidence of a hydrological connection and the distance of the spring from downstream jurisdictional washes, the Corps determined that the spring and wetland feature was an isolated, non-navigable water body. Due to the lack of any substantial interstate commerce associated with the wetland, and/or use of the wetland for industrial, fish/shellfish production, and recreation, the Corps determined that the wetland was non-jurisdictional under the SWANCC Supreme Court decision. There are several ephemeral washes within the project area that exhibit ordinary high water mark characteristics, are not isolated, and are tributaries to the Verde River. The Verde River flows into the Salt River, which flows into the Gila River, which flows into the Colorado River, the downstream navigable water.